IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYNELL ALLEN, as parent and legal guardian of SHAKIRAH JONES	:	CIVIL ACTION
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, ET AL.	:	NO. 05-5523

MEMORANDUM

Padova, J. **July 12, 2006**

Plaintiff has brought this civil rights action, pursuant to 42 U.S.C. §§ 1983, against the School District of Philadelphia; Paul Vallas, Executive Director of the School District; the Daniel Boone School; Daniel Boone School principal Alexander; and Daniel Boone School teacher Scruggs, asserting claims arising from an alleged physical assault on Daniel Boone School student Shakirah Jones by Defendant Scruggs. Before the Court is the Motion to Dismiss filed by Defendants Alexander, Scruggs, and the Daniel Boone School (the "Moving Defendants"). For the reasons that follow, the Court grants the Motion in part and denies it in part.

I. BACKGROUND

The Second Amended Complaint alleges the following facts. Shakirah Jones is a minor female who was enrolled in the Daniel Boone School as a student on September 22, 2005. (2d Am. Compl. ¶¶ 2, 8.) The Daniel Boone School is an agency in the Commonwealth of Pennsylvania. (Id. ¶ 4.) Ms. Jones had an argument with another student during her social studies class that day about her seat. (Id. at ¶ 9.) She asked her teacher, Defendant Scruggs, if she could leave the room because she was upset. (Id. at ¶ 10.) He gave permission and she left the room and began walking down the hall. (Id. at ¶ 11.) Defendant Scruggs followed Ms. Jones out of the classroom in order to keep her

from walking down the hall. (Id. at ¶ 12.) He then, without warning, cause or justification, grabbed Ms. Jones from behind and slammed her against the wall with such force that her chin and mouth began bleeding. (Id. at ¶¶ 13-14.) She fell to the ground and was placed in handcuffs and taken to another room in the school. (Id. at ¶ 15.) After she reached the other room, and while she was still handcuffed, other Daniel Boone School officials administered first aid. (Id. at ¶ 16.) She was kept in the room for over an hour until she was released into the custody of her mother. (Id. at ¶¶ 17-18.) Her mother took her to the hospital later that day. (Id. at ¶ 18.) As a direct and proximate result of Defendants' actions, Ms. Jones suffered serious physical injury, including lacerations and contusions on her head and three chipped and cracked teeth, mental anguish, psychological and emotional distress, and pain and suffering. (Id. at ¶¶ 21, 22.)

Ms. Jones was not charged with any criminal offenses relating to this incident until after the original Complaint was filed in this action. (Id. at ¶ 18.) On November 3, 2005, eleven days after Plaintiff filed this action, upon the recommendation of the Defendants, Ms. Jones was arrested and charged with aggravated assault, simple assault and disorderly conduct. (Id. at ¶ 19.)

Plaintiff alleges one cause of action against all Defendants pursuant to 42 U.S.C. § 1983. The Second Amended Complaint claims that the conduct of all Defendants, who were acting under the color of state law and in concert or conspiracy with each other, deprived Ms. Jones of her rights, privileges and immunities under the First, Fourth, Fifth, and Fourteenth Amendments. Specifically, Defendants deprived Ms. Jones of her right to be free from excessive force under the Fourth, Fifth and Fourteenth Amendments, her right to be free from retaliation for exercising her right to free speech under the First Amendment, her right to be free from unreasonable seizures under the Fourth Amendment, and her right to equal protection under the Fourteenth Amendment.

II. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Rule 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the Plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). However, the court "need not credit a complaint's 'bald assertions' or 'legal conclusions.'" California Pub. Employee Ret. Sys. v. The Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004) (citing Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997)). A Rule 12(b)(6) motion will be granted when a Plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him or her to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. DISCUSSION

The Moving Defendants seek dismissal of Plaintiff's claims against the Daniel Boone School on the grounds that the Second Amended Complaint does not state a claim for municipal liability against the School. The Moving Defendants additionally seek dismissal of Plaintiff's claims against Defendants Scruggs and Alexander in their official capacities because those claims are duplicative of Plaintiff's claims against the School District. The Moving Defendants have also asked the Court to dismiss all of Plaintiff's claims that Ms. Jones's Constitutional rights have been violated, as well as her prayer for relief in the form of punitive damages, on the grounds that the Second Amended Complaint does not state any claims for violation of Ms. Jones's Constitutional rights upon which relief may be granted. Plaintiff has informed the Court that she does not oppose the dismissal of her Fourth and Fifth Amendment excessive force claims, her Fourth Amendment unreasonable seizure

claim, her Fourteenth Amendment equal protection claim, and her conspiracy claim. Those claims are, accordingly, dismissed. Plaintiff does, however, oppose the dismissal of her remaining claims.

A. Daniel Boone School

The Moving Defendants seek dismissal of Plaintiff's claims against the Daniel Boone School on the grounds that the School cannot be liable for the actions of its employees pursuant to Section 1983 under a theory of *respondeat superior*. Plaintiff maintains that her claims against the Daniel Boone School are "predicated on the theories of municipal liability set forth in Monell v. [New York City] Dep't of Social Svcs., 436 U.S. 658, 690-91, 694 (1978)." (Pl.'s Resp. at 4.) Pursuant to Monell, "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." Monell, 436 U.S. 658 at 691. A municipality may only be held liable under Section 1983 when the municipality itself causes a constitutional violation pursuant to an official policy or governmental custom. Id. at 694. The United States Court of Appeals for the Third Circuit has recently explained that there are three ways in which a municipality may be liable for the torts of its employees pursuant to Monell:

> First, the municipality will be liable if its employee acted pursuant to a formal government policy or a standard operating procedure long accepted within the government entity, Jett v. Dallas Independent School District, 491 U.S. 701, 737, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989); second, liability will attach when the individual has policy making authority rendering his or her behavior an act of official government policy, Pembaur v. City of Cincinnati, 475 U.S. 469, 480-81, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986); third, the municipality will be liable if an official with authority has ratified the unconstitutional actions of a subordinate, rendering such behavior official for liability purposes, City of St. Louis v. Praprotnik, 485 U.S. 112, 127, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988).

McGreevy v. Stroup, 413 F.3d 359, 367 (3d Cir. 2005).

The Second Amended Complaint alleges that the Daniel Boone School had policies or customs of allowing unjustified and illegal use of force by employees against students and of failure to monitor, test or train its employees, which led employees of the School "to believe that they can violate the rights of students, with impunity, including the use of violence . . . ." (2d Am. Compl. ¶¶ 33-37.) The Second Amended Complaint does not, however, allege that the Daniel Boone School is a municipality, or even an agency of a municipality; rather, it alleges only that the Daniel Boone School "is an agency in the Commonwealth of Pennsylvania . . . ." (2d Am. Compl. ¶ 4.) Even if Plaintiff intended to allege that the Daniel Boone School is an agency **of** the Commonwealth of Pennsylvania, such an allegation could not support a Section 1983 claim against the School for the simple reason that the holding in Monell is limited to "'to local government units not considered part of the State for Eleventh Amendment purposes.'" Indep. Enters. v. Pittsburgh Water & Sewer Auth., 103 F.3d 1165, 1172-73 (3d Cir. 1997) (quoting Monell, 436 U.S. at 690 n.54). Consequently, the Court finds that the Second Amended Complaint does not state a claim of municipal liability against the Daniel Boone School upon which relief may be granted and the Motion to Dismiss is, therefore, granted with respect to the Daniel Boone School.

B. Official Capacity Claims Against Defendants Scruggs and Alexander

The claims against Defendants Scruggs and Alexander are asserted against them in both their individual and official capacities. Moving Defendants seek dismissal of the claims brought against Defendants Scruggs and Alexander in their official capacities because those claims are redundant to the claims brought against the School District of Philadelphia. While actions brought against a government official in his or her individual capacity "seek to impose liability on the government official for actions he takes under color of state law, . . . official capacity actions represent another

way to sue the municipality of which the officer is an agent. Brown v. Montgomery County, Civ.A.No. 04-5729, 2005 WL 1283577, at *4 (E.D. Pa. May 26, 2005) (citing Kentucky v. Graham, 473 U.S. 159, 166 (1985)). Thus, suits brought against government officials in their official capacities are treated as suits brought against the governmental unit of which they are officials. Mitros v. Borough of Glenolden, 170 F. Supp. 2d 504, 506 (E.D. Pa.2001) (citing Brandon v. Holt, 469 U.S. 464, 471-72 (1985)); see also McGreevy, 418 F.3d at 369 (relying on Mitros, 170 F. Supp. 2d at 506). Consequently, "an action brought against both the entity and the public official in his or her official capacity is redundant, [and] the Court ultimately has discretion in deciding whether to dismiss the claims against the individual defendants." Brown, 2005 WL 1283577, at *4 (citing Satterfield v. Borough of Schuylkill Haven, 12 F. Supp. 2d 423, 432 (E.D. Pa.1998)). Plaintiff did not address the dismissal of the official capacity claims against Defendants Scruggs and Alexander in her response to the Motion to Dismiss. The Court finds that the claims asserted against Defendants Scruggs and Alexander in their official capacities are redundant to the claims brought against the School District of Philadelphia and the Motion to Dismiss is, therefore, granted with respect to Plaintiff's claims brought against Defendants Scruggs and Alexander in their official capacities.

C. Excessive Force

The Moving Defendants also contend that Plaintiff's Fourteenth Amendment excessive force claim against Defendant Scruggs in his individual capacity should be dismissed. Plaintiff alleges that Ms. Jones was subjected to excessive force by Defendant Scruggs when he slammed her against the wall to prevent her from walking down the hall. The Third Circuit applies "the Fourteenth Amendment's shocks the conscience standard to federal claims alleging the use of excessive force

by public school officials." Gottlieb v. Laurel Highlands Sch. Dist., 272 F.3d 168, 172 (3d Cir. 2001). The Third Circuit has adopted the shocks the conscience test developed by the United States Court of Appeals for the Fourth Circuit in Hall v. Tawney, 621 F.2d 607 (4th Cir. 1980), which looks at "'whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience.'" Gottlieb, 272 F.3d at 173 (quoting Hall, 621 F.3d at 613). The Third Circuit has directed courts to consider the following four elements in applying the shocks the conscience test to the use of excessive force by school employees:

> a) Was there a pedagogical justification for the use of force?; b) Was the force utilized excessive to meet the legitimate objective in this situation?; c) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm?; and d) Was there a serious injury?

Id.

The Second Amended Complaint alleges that Defendant Scruggs had no justification or legitmate objective in his use of force. (2d Am. Compl. ¶ 13.) The Second Amended Complaint further alleges that Ms. Jones suffered a serious injury as a result of this use of force. (Id. ¶ 14.) The Second Amended Complaint also alleges that Defendant Scruggs did not use force in a good faith effort to maintain or enforce discipline since it alleges that, at the time Defendant Scruggs assaulted Ms. Jones, she was merely walking, with permission, down the hallway. (Id. ¶¶ 11-12.) The Court concludes that the Second Amended Complaint alleges a cause of action for excessive force in accordance with the shocks the conscience standard adopted by the Third Circuit. The Motion to Dismiss is, therefore, denied with respect to Plaintiff's claim that Defendant Scruggs used

excessive force against Ms. Jones in violation of her Fourteenth Amendment rights.

The Moving Defendants also argue that Plaintiff's excessive force claim should be dismissed as against Principal Alexander because the Second Amended Complaint does not allege that he personally took any action with respect to Defendant Scrugg's use of force. Rather, the Moving Defendants argue, Plaintiff seeks the imposition of liability on Principal Alexander based upon his supervisory position at the Daniel Boone School. Liability cannot be imposed upon a defendant in a Section 1983 claim pursuant to a theory of *respondeat superior*. The Third Circuit has explained that: "'A[n individual government] defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of respondeat superior. Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.'" Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)).

The Second Amended Complaint does not allege that Principal Alexander had any personal involvement in, directed, had actual knowledge of, or acquiesced in Defendant Scrugg's use of force. Accordingly, the Motion to Dismiss is granted as to Principal Alexander with respect to Plaintiff's Fourteenth Amendment excessive force claim.

D. Retaliatory Prosecution

The Moving Defendants also seek dismissal of Plaintiff's claim of retaliatory prosecution in violation of the First Amendment. Plaintiff maintains that Defendants subjected her to prosecution for aggravated and simple assault and disorderly conduct with respect to the events of September 22, 2005, in retaliation for her filing the instant lawsuit, in violation of the First Amendment. "The First Amendment prohibits government officials from subjecting an individual to retaliatory actions,

including criminal prosecutions, for speaking out." Hartman v. Moore, ___ U.S. ___, 126 S.Ct. 1695, 1701 (2006). In order to state a claim for retaliation in violation of the First Amendment, the Plaintiff must allege the following: "(1) that [Jones] engaged in protected activity; (2) that the government responded with retaliation; and (3) that the protected activity was the cause of the retaliation." Estate of Smith v. Marasco, 318 F.3d 497, 512 (3d Cir. 2003) (citing Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997)). In cases of retaliatory prosecution in violation of the First Amendment, the Supreme Court also requires that the plaintiff plead and prove the absence of probable cause for such prosecution. Hartman, 126 S.Ct. at 1707. This requirement is part of the element of causation. The Supreme Court explained in Hartman that, in a retaliatory prosecution case, unlike other retaliation cases:

> there will always be a distinct body of highly valuable circumstantial evidence available and apt to prove or disprove retaliatory causation, namely evidence showing whether there was or was not probable cause to bring the criminal charge. Demonstrating that there was no probable cause for the underlying criminal charge will tend to reinforce the retaliation evidence and show that retaliation was the but-for basis for instigating the prosecution, while establishing the existence of probable cause will suggest that prosecution would have occurred even without a retaliatory motive.

Id. at 1704. Moreover, "the causal connection required [in a claim of retaliatory prosecution] is not merely between the retaliatory animus of one person and that person's own injurious action, but between the retaliatory animus of one person and the action of another." Id. at 1705 (citation omitted). As a result, evidence that a government official was motivated by animus toward the plaintiff in urging prosecution "does not necessarily show that the [official] induced the action of a prosecutor who would not have pressed charges otherwise. Moreover, to the factual difficulty of divining the influence of [the government official] upon the prosecutor's mind, there is an added

legal obstacle in the longstanding presumption of regularity accorded to prosecutorial decisionmaking." Id. (citing Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 489-490 (1999) and United States v. Armstrong, 517 U.S. 456, 464-66 (1996)). Consequently, the Supreme Court has determined that the allegation of lack of probable cause "is needed both to bridge the gap between the nonprosecuting government agent's motive and the prosecutor's action, and to address the presumption of prosecutorial regularity." Id. at 1706.

The Second Amended Complaint alleges that Ms. Jones engaged in the protected activity of filing the instant lawsuit, that the Moving Defendants responded by recommending that Ms. Jones be arrested and charged with aggravated and simple assault and with disorderly conduct, and that she was so arrested and charged. (2d Am. Compl. ¶¶ 19.) The Second Amended Complaint does not, however, allege that there was a lack of probable cause for those charges. Accordingly, Defendant's Motion to Dismiss Plaintiff's claim of retaliatory prosecution in violation of the First Amendment is granted.

E. Punitive Damages

The Moving Defendants also seek dismissal of Plaintiff's prayer for relief in the form of punitive damages on the grounds that the Second Amended Complaint fails to state a claim for punitive damages on which relief may be granted. It is well settled that punitive damages may not be awarded against municipalities. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981). "However, in a § 1983 claim against individual defendants, a jury may assess punitive damages if the defendant's conduct is shown to be motivated by an evil motive or intent, or when it involves reckless or callous indifference to constitutionally protected rights." Davis ex rel. Davis v. Borough of Norristown, 400 F.Supp.2d 790, 801 (E.D. Pa. 2005) (citing Brennan v. Norton, 350 F.3d 399,

428-29 (3d Cir. 2003)). The Court has found that the Second Amended Complaint alleges a claim for excessive force which satisfies the Fourteenth Amendment's shocks the conscience standard. That standard requires that the application of force be motivated by malice or sadism rather than a good faith effort to maintain or restore discipline. See Gottlieb, 272 F.3d at 173. Consequently, the Court also finds that Plaintiff's prayer for relief in the form of punitive damages against Defendant Scruggs for his use of excessive force in violation of the Fourteenth Amendment states a cognizable claim for relief. The Motion to Dismiss is, therefore, denied with respect to Plaintiff's prayer for relief in the form of punitive damages against Defendant Scruggs in connection with the claim that Defendant Scruggs violated Ms. Jones' Fourteenth Amendment right to be free of excessive force.

IV. CONCLUSION

For the reasons stated above, the Motion to Dismiss is granted in the following respects. Plaintiff's Section 1983 claims for violation of the First, Fourth, and Fifth Amendments are dismissed. All of Plaintiff's claims brought against the Daniel Boone School and Defendant Alexander are also dismissed and those Defendants are dismissed as Defendants in this action. All of Plaintiff's claims brought against Defendant Scruggs in his official capacity are dismissed as well. The Motion is denied with respect to Plaintiff's claim, brought pursuant to 42 U.S.C. § 1983, that Defendant Scruggs violated Ms. Jones' Fourteenth Amendment right to be free of excessive force and with respect to Plaintiff's prayer for relief in the form of punitive damages. Plaintiff may file an amended complaint which cures the deficiencies in the Second Amended Complaint within fifteen days of the date of the Order accompanying this Memorandum.[1] An appropriate Order follows.

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[1]"If a complaint is vulnerable to 12(b)(6) dismissal, a District Court must permit a curative amendment, unless an amendment would be inequitable or futile." Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) (citing Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002)).

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O R D E R

AND NOW, this 12th day of July, 2006, upon consideration of the Motion to Dismiss filed by Defendants Alexander, Scruggs, and the Daniel Boone School (Docket No. 12) and Plaintiff's response thereto, **IT IS HEREBY ORDERED** that the Motion is **GRANTED in part and DENIED in part** as follows:

1. The Motion to Dismiss is **DENIED** with respect to Plaintiff's claim, brought pursuant to 42 U.S.C. § 1983, against Defendant Scruggs, for violation of her Fourteenth Amendment right to be free of excessive force. The Motion is also **DENIED** with respect to Plaintiff's prayer for relief in the form of punitive damages in connection with that claim. The Motion to Dismiss is **GRANTED, without prejudice**, in all other respects.

2. Plaintiff may file a Third Amended Complaint, curing the deficiencies in the Second Amended Complaint, within fifteen days of the date of this Order.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.